

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DIOMED, INC.,

Plaintiff,

v.

NEW STAR LASERS, INC.
d/b/a COOLTOUCH INC.

Defendant.

Civil Action No. 04-12157 NMG

JOINT STATEMENT REGARDING PROPOSED PRE-TRIAL SCHEDULE

Pursuant to the Court's Orders dated February 17, 2005 and August 12, 2008, Diomed and New Star Lasers provide the following Joint Statement¹ regarding the schedule of this case.²

CLAIM CONSTRUCTION

By October 10, 2008, the parties shall jointly apprise the Court whether they request that the Court adopt the construction entered in the consolidated Diomed v. AngioDynamics, Civil Action No. 04-CV-10019-NMG and Diomed v. Vascular Solutions, Civil Action No. 04-CV-10444-NMG litigation on April 12, 2005.

If either party seeks a different or additional claim construction, that party shall file such request by November 7, 2008. The other party shall file its response to such request by December 15, 2008.

¹ With respect to other issues contemplated by Local Rule 16.1, the parties refer the Court to their earlier Joint Statement (D.I. 10).

² This Joint Statement is submitted by Diomed and New Star Lasers without input from Endolaser, which has filed a motion to intervene in this case. Neither Diomed nor New Star Lasers opposes Endolaser's motion to intervene (although Diomed opposes Endolaser's motion to dismiss). If the Court denies Endolaser's motion to dismiss, it is possible that Endolaser will seek input into scheduling issues.

DISCOVERY

All discovery (including document production, responses to interrogatories, responses to requests for admission and depositions) shall be completed within ninety (90) days of the Court rendering a claim construction decision in response to the parties' claim construction submissions described above.

Each party shall designate its expert witnesses, and provide expert reports with regard to issues on which it bears the burden of proof, within thirty (30) days after the Court renders a claim construction decision. Each party shall provide rebuttal expert reports within thirty (30) days of service of opening expert reports. All expert discovery, including expert depositions, shall be completed within sixty (60) days of service of opening expert reports.

SUMMARY JUDGMENT

Summary judgment motions shall be filed within forty-five (45) days after the close of discovery.

Oppositions to summary judgment motions shall be filed within fourteen (14) days after service of summary judgment motions.

Reply briefs in support of summary judgment motions shall be permitted and shall be filed within seven (7) days after service of the aforementioned opposition briefs.

SETTLEMENT

The parties and their counsel recently met before a private mediator in San Francisco, California on but were unable to settle this matter through mediation.

TRIAL

Diomed requests the earliest date certain for trial that the Court's calendar can accommodate given the above schedule (which includes several deadlines keyed off the Court's decision on claim construction).

Respectfully submitted,

/s/ Michael N. Rader

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d/b/a COOLTOUCH INC.*

September 11, 2008

CERTIFICATE OF SERVICE

I certify that this document is being filed through the Court's electronic filing system, which serves counsel for other parties who are registered participants as identified on the Notice of Electronic Filing (NEF). Any counsel for other parties who are not registered participants are being served by first class mail on the date of electronic filing.

/s/ Michael N. Rader

Michael N. Rader